TITLE 7 HEALTH
CHAPTER 34 MEDICAL USE OF CANNABIS
PART 2 ADVISORY BOARD RESPONSIBILITIES AND DUTIES

7.34.2.1 ISSUING AGENCY: New Mexico Department of Health, Medical Cannabis Program.
[7.34.2.1 NMAC - Rp, 7.34.2.1 NMAC, 2/27/2015]

7.34.2.2 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the secretary of the department of health pursuant to the authority granted under Section 9-7-6 (E) NMSA 1978, and the Lynn and Erin Compassionate Use Act, 26-2B-1 et seq. NMSA 1978.
[7.34.2.2 NMAC - Rp, 7.34.2.2 NMAC, 2/27/2015]

7.34.2.3 SCOPE: This part governs the membership, duties, responsibilities and public hearing proceedings of the medical cannabis advisory board.
[7.34.2.3 NMAC - Rp, 7.34.2.3 NMAC, 2/27/2015]

7.34.2.4 DURATION: Permanent.
[7.34.2.4 NMAC - Rp, 7.34.2.4 NMAC, 2/27/2015]

7.34.2.5 EFFECTIVE DATE: February 27, 2015, unless a later date is cited at the end of a section.
[7.34.2.5 NMAC - Rp, 7.34.2.5 NMAC, 2/27/2015]

7.34.2.6 OBJECTIVE: The objective of this part is to establish membership, duties, responsibilities, and public hearing procedures that govern the medical cannabis advisory board proceedings.
[7.34.2.6 NMAC - Rp, 7.34.2.6 NMAC, 2/27/2015]

7.34.2.7 DEFINITIONS:

A. "Act" means the Lynn and Erin Compassionate Use Act, NMSA 1978, Sections 26-2B-1 through 26-2B-7.

B. "Adequate supply" means an amount of cannabis, derived solely from an intrastate source and in a form approved by the department, that is possessed by a qualified patient or collectively possessed by a qualified patient and the qualified patient's primary caregiver, that is determined by the department to be no more than reasonably necessary to ensure the uninterrupted availability of cannabis for a period of three months or 90 consecutive calendar days.

C. "Administrative review committee" means an intra-department committee that reviews qualified patient or primary caregiver application denials, licensed producer denials made by the program manager, or the imposition of a summary suspension, in accordance with department rules. The administrative review committee shall consist of the chief medical officer of the department (or that's person's designee); a deputy secretary of the department (or that person's designee), and the chief nursing officer of the department (or that person's designee).

D. "Administrative withdrawal" means the procedure for the voluntary withdrawal of a qualified patient or primary caregiver from the medical cannabis program.

E. "Advisory board" means the medical cannabis advisory board consisting of eight practitioners representing the fields of neurology, pain management, medical oncology, psychiatry, infectious disease, family medicine, and gynecology.

F. "Applicant" means any person applying for enrollment or re-enrollment in the medical cannabis program as a qualified patient, primary caregiver, or licensed producer.

G. "Approved laboratory" means a laboratory that has been approved by the department specifically for the testing of cannabis, concentrates, and cannabis derived products.

H. "Batch" means, with regard to usable cannabis, a homogenous, identified quantity of cannabis harvested during a specified time period from a specified cultivation area, and with regard to concentrated and cannabis-derived product, means an identified quantity that is uniform, that is intended to meet specifications for identity, strength, and composition, and that is manufactured, packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling protocol.

I. "Cannabidiol ("CBD")" is a cannabinoid and the primary non-psychoactive ingredient found in cannabis.

J. **"Cannabis"** means all parts of the plant, cannabis sativa, and cannabis indica, whether growing or not and the resin extracted from any part of the plant.

K. **"Cannabis-derived product"** means a product, other than cannabis itself, which contains or is derived from cannabis, not including hemp.

L. **"Concentrated cannabis-derived product ("concentrate")"** means a cannabis-derived product that is manufactured by a mechanical or chemical process that separates any cannabinoid from the cannabis plant, and that contains (or that is intended to contain at the time of sale or distribution) no less than thirty-percent (30%) THC by weight.

M. **"Courier"** means a person or entity that transports usable cannabis within the state of New Mexico from a licensed non-profit producer to a qualified patient or primary caregiver.

N. **"Debilitating medical condition"** means:

(1) cancer;

(2) glaucoma;

(3) multiple sclerosis;

(4) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity;

(5) epilepsy;

(6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome;

(7) admission into hospice care in accordance with rules promulgated by the department; or

(8) any other medical condition, medical treatment, or disease as approved by the department which results in pain, suffering, or debility for which there is credible evidence that medical use cannabis could be of benefit.

O. **"Department"** means the department of health or its agent.

P. **"Facility"** means any building, space, or grounds licensed for the production, possession, testing, manufacturing, or distribution of cannabis, concentrates, or cannabis-derived products.

Q. **"Intrastate"** means existing or occurring within the state boundaries of New Mexico.

R. **"Laboratory applicant"** means a laboratory that seeks to become an approved laboratory, or that seeks renewal of approval as an approved laboratory, in accordance with this rule.

S. **"License"** means the document issued by the department granting the legal right to produce medical cannabis for a specified period of time.

T. **"Licensed producer"** means a person or entity licensed to produce medical cannabis.

U. **"Licensure"** means the process by which the department grants permission to an applicant to produce cannabis.

V. **"Lot"** means an identified portion of a batch, that is uniform and that is intended to meet specifications for identity, strength, and composition; or, in the case of a cannabis-derived product or concentrate, an identified quantity produced in a specified period of time in a manner that is uniform and that is intended to meet specifications for identity, strength, and composition.

W. **"Male plant"** means a male cannabis plant.

X. **"Manufacture"** means to make or otherwise produce cannabis-derived product or concentrate.

Y. **"Manufacturer"** means a business entity that manufactures cannabis-derived product that has been approved for this purpose by the medical cannabis program.

Z. **"Mature female plant"** means a harvestable female cannabis plant that is flowering.

AA. **"Medical cannabis program"** means the administrative body of the department charged with the management of the medical cannabis program and enforcement of program regulations, to include issuance of registry identification cards, licensing of producers, and regulation of manufacturing and distribution.

BB. **"Medical cannabis program manager"** means the administrator of the medical cannabis program who holds that title.

CC. **"Medical director"** means a medical practitioner designated by the department to determine whether the medical condition of an applicant qualifies as a debilitating medical condition eligible for enrollment in the program, and to perform other duties.

DD. **"Medical provider certification for patient eligibility form"** means a written certification form provided by the medical cannabis program signed by a patient's practitioner that, in the practitioner's professional opinion, the patient has a debilitating medical condition as defined by the act or this part and would be anticipated to benefit from the use of cannabis.

EE. **"Minor"** means an individual less than 18 years of age.

FF. "Paraphernalia" means any equipment, product, or material of any kind that is primarily intended or designed for use in compounding, converting, processing, preparing, inhaling, or otherwise introducing cannabis or its derivatives into the human body.

GG. "Patient enrollment/re-enrollment form" means the registry identification card application form for patient applicants provided by the medical cannabis program.

HH. "Personal production license" means a license issued to a qualified patient participating in the medical cannabis program, to permit the qualified patient to produce medical cannabis for the qualified patient's personal use, consistent with the requirements of department rule.

II. "Petitioner" means any New Mexico resident or association of New Mexico residents petitioning the advisory board for the inclusion of a new medical condition, medical treatment, or disease to be added to the list of debilitating medical conditions that qualify for the use of cannabis.

JJ. "Plant" means any cannabis plant, cutting, or clone that has roots or that is cultivated with the intention of growing roots.

KK. "Policy" means a written statement of principles that guides and determines present and future decisions and actions of the licensed producer.

LL. "Practitioner" means a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act, Sections 30-31-1 *et seq.*, NMSA 1978.

MM. "Primary caregiver" means a resident of New Mexico who is at least 18 years of age and who has been designated by the qualified patient or their representative and the patient's practitioner as being necessary to take responsibility for managing the well-being of a qualified patient with respect to the medical use of cannabis pursuant to the provisions of the Lynn and Erin Compassionate Use Act, Section 26-2B-1 *et seq*., NMSA 1978.

NN. "Primary caregiver application form" means the registry identification card application form provided by the medical cannabis program.

OO. "Private entity" means a private, non-profit organization that applies to become or is licensed as a producer and distributor of cannabis, concentrates, or cannabis-derived products.

PP. "Proficiency testing" means testing conducted by the department or its agent to determine the ability of a laboratory applicant or approved laboratory to accurately identify presence, quantity, or other factors pertaining to a given analyte.

QQ. "Qualified patient" means a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received a registry identification card issued pursuant to the requirements of the act or department rules.

RR. "Registry identification card" means a document issued and owned by the department which identifies a qualified patient authorized to engage in the use of cannabis for a debilitating medical condition or a document issued by the department which identifies a primary caregiver authorized to engage in the intrastate possession and administration of cannabis for the sole use of the qualified patient.

SS. "Representative" means an individual designated as the applicant's or petitioner's agent, guardian, surrogate, or other legally appointed or authorized health care decision maker.

TT. "Secretary" means the secretary of the New Mexico department of health.

UU. "Secure grounds" means a facility that provides a safe environment to avoid loss or theft.

VV. "Security alarm system" means any device or series of devices capable of alerting law enforcement , including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device used to detect or report an emergency or unauthorized intrusion.

WW. "Security policy" means the instruction manual or pamphlet adopted or developed by the licensed producer containing security policies, safety and security procedures, and personal safety and crime prevention techniques.

XX. "Seedling" means a cannabis plant that has no flowers.

YY. "Segregate" means to separate and withhold from use or sale batches, lots, cannabis, usable cannabis, or cannabis-derived products in order to first determine its suitability for use through testing by an approved laboratory.

ZZ. "THC" means tetrahydrocannabinol, a cannabinoid that is the primary psychoactive ingredient in cannabis.

AAA. "Technical evidence" means scientific, clinical, medical, or other specialized testimony, or evidence, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.

BBB. "Testing" means the process and procedures provided by an approved laboratory for testing of cannabis and cannabis derived products, consistent with provisions of this rule.

CCC. "Unit" means a quantity of usable cannabis, concentrate, or cannabis-derived product that is used in identifying the maximum supply that a qualified patient may possess for purposes of department rules.

DDD. "Usable cannabis" means the dried leaves and flowers of the female cannabis plant and cannabis-derived products, including concentrates, but does not include the seeds, stalks, or roots of the plant.

[7.34.2.7 NMAC - Rp, 7.34.2.7 NMAC, 2/27/2015]

7.34.2.8 ADVISORY BOARD MEMBERSHIP REQUIREMENTS AND RESPONSIBILITIES:

A. Advisory board membership: The advisory board shall consist of eight practitioners representing the fields of neurology, pain management, medical oncology, psychiatry, infectious disease, family medicine and gynecology. The practitioners shall be nationally board-certified in their area of specialty and knowledgeable about the medical use of cannabis. The members shall be chosen for appointment by the secretary from a list proposed by the New Mexico medical society.

B. Duties and responsibilities: The advisory board shall convene at least twice per year to:

(1) review and recommend to the department for approval additional debilitating medical conditions that would benefit from the medical use of cannabis;

(2) recommend quantities of cannabis that are necessary to constitute an adequate supply for qualified patients and primary caregivers;

(3) accept and review petitions to add medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis and all lawful privileges under the act and implementing rules;

(4) issue recommendations concerning rules to be promulgated for the issuance of registry identification cards; and

(5) review conditions previously reviewed by the board and approved by the secretary for the purpose of determining whether to recommend the revision of eligibility criteria for persons applying under those conditions or to review new medical and scientific evidence pertaining to currently approved conditions.

C. Advisory board membership term: Each member of the advisory board shall serve a term of two years from the date of appointment by the secretary. No member may be removed prior to the expiration of his or her term without a showing of good cause by the secretary.

D. Chairperson elect: The advisory board shall elect by majority vote cast of the eight member board a chairperson and an alternate. The chairperson or alternate shall exercise all powers and duties prescribed or delegated under the act or this rule.

(1) Public hearing responsibilities: The chairperson shall conduct a fair and impartial proceeding, assure that the facts are fully elicited and avoid delay. The chairperson shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial resolution of issues arising during the public hearing proceedings or in any public meeting in which a quorum of the advisory board are present.

(2) Delegation of chair: The chairperson may delegate their responsibility to an alternate. The alternate shall exercise all powers and duties prescribed or delegated under the act or this part.

E. Per diem and mileage: All advisory board members appointed under the authority of the act or this part will receive as their sole remuneration for services as a member those amounts authorized under the Per Diem and Mileage Act, Sections 10-8-1 *et seq.*, NMSA 1978.

[7.34.2.8 NMAC - Rp, 7.34.2.8 NMAC, 2/27/2015]

7.34.2.9 PETITION REQUIREMENTS:

A. Petition requirements. The advisory board may accept and review petitions from any individual or association of individuals requesting the addition of a new medical condition, medical treatment or disease for the purpose of participating in the medical cannabis program and all lawful privileges under the act. Except as otherwise provided, a petitioner filing a petition shall file the petition and a copy with the medical cannabis program staff by either personal delivery or certified mail. In order for a petition to be processed and forwarded to the advisory board the following information shall be submitted to the medical cannabis program staff.

(1) Petition format: Unless otherwise provided by this part or by order of the hearing officer, all documents, except exhibits, shall be prepared on 8 1/2 x 11-inch white paper, printed double-sided, if possible, and where appropriate, the first page of every document shall contain a heading and caption. The petitioner shall include in the petition documents a narrative address to the advisory board, which includes:

(a) petition caption stating the name, address and telephone number of the petitioner and the medical condition, medical treatment or disease sought to be added to the existing debilitating medical conditions;

(b) an index of the contents of the petition, an introductory narrative of the individual or association of individuals requesting the inclusion of a new medical condition, medical treatment or disease to include the individual or association of individuals' relationship or interest for the request whether that interest is professional or as a concerned citizen;

(c) the proposed benefits from the medical use of cannabis specific to the medical condition, medical treatment or disease sought to be added to the existing debilitating medical conditions listed under the act; and

(d) any additional supporting medical, testimonial, or scientific documentation.

(2) Statement of intent to present technical evidence: If the petitioner wishes to present technical evidence at the hearing, the petition shall include a statement of intent. The statement of intent to present technical evidence shall include:

(a) the name of the person filing the statement;

(b) the name of each witness;

(c) an estimate of the length of the direct testimony of each witness;

(d) a list of exhibits, if any, to be offered into evidence at the hearing; and

(e) a summary or outline of the anticipated direct testimony of each witness.

B. Qualified patient applicant petitioner: If the petitioner is submitting their requests as a potential qualified patient applicant the petitioner shall attach an original medical practitioner's certification for patient eligibility form provided by the medical cannabis program manager or designee which includes the following information:

(1) the name, address, telephone number and clinical licensure of the petitioner's practitioner;

(2) the medical justification for practitioner's certification of the petitioner's debilitating medical condition;

(3) the practitioner's signature and date of signature;

(4) the name, address and date of birth of the petitioner;

(5) the name, address and telephone number of the petitioner's practitioner;

(6) a reasonable xerographic copy of the petitioner's New Mexico driver's license or comparable New Mexico state or federal issued photo identification card verifying New Mexico residence;

(7) documented parental consent if applicable to the petitioner;

(8) if applicable, the petitioner's potential debilitating medical condition;

(9) the length of time the petitioner has been under the care of the practitioner providing the medical provider certification for patient eligibility;

(10) the petitioner's signature and date; and

(11) a signed consent for release of medical information form provided by the medical cannabis program.

C. Petitioner confidentiality: The department shall maintain a confidential file containing the names and addresses of the persons who have either applied for or received a public hearing petition request. Individual names on the list shall be confidential and not subject to disclosure, except:

(1) to authorized employees or agents of the department as necessary to perform the duties of the department pursuant to the provisions of the act or this part;

(2) as provided in the federal Health Insurance Portability and Accountability Act of 1996.

D. Department notification: The medical cannabis program manager or designee shall review each petition request and within reasonable time after receipt issue notice of docketing upon the petitioner, each advisory board member, and the advisory board legal counsel. The notice of docketing shall contain the petition caption and docket number, the date upon which the petition was received and scheduling date of the advisory board public hearing. A copy of this rule shall be included with a notice of docketing sent to the petitioner.

E. Examination allowed: Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed in any public hearing proceeding. Inspection shall be permitted in accordance with the Inspection of Public Records Act, Sections 14-2-1 *et seq.*, NMSA 1978, but may be limited by the Health Insurance Portability and Accountability Act of 1996. Documents subject to inspection shall be made available by the medical cannabis program manager, or

designee as appropriate. Unless waived by the department, the cost of duplicating documents or audio filed in any public hearing proceeding shall be borne by the person seeking the copies.

F. Notice of withdrawal: A petitioner may withdraw a petition at any time prior to a decision by the advisory board by filing a notice of withdrawal with the medical cannabis program manager or designee.
[7.34.2.9 NMAC - Rp, 7.34.2.9 NMAC, 2/27/2015]

7.34.2.10 ADVISORY BOARD PUBLIC HEARING PROCEDURES:

A. Public hearing requirement: The advisory board shall convene by public hearing at least twice per year to accept and review petitions requesting the inclusion of medical conditions, medical treatments or diseases to the list of debilitating medical conditions. Any meeting consisting of a quorum of the advisory board members held for the purpose of evaluating, discussing or otherwise formulating specific opinions concerning the recommendation of a petition filed pursuant to this rule, shall be declared a public hearing open to the public at all times, unless a portion of the hearing is closed to protect information made confidential by applicable state or federal laws. A petitioner or his or her representative may request to close a portion of the hearing to protect the disclosure of confidential information by submitting their request in writing and having that request delivered to medical cannabis program staff at least 48 hours prior to the hearing.

B. Location of the public hearing: Unless otherwise ordered by the advisory board, the public hearing shall be in held in New Mexico at a location sufficient to accommodate the anticipated audience.

C. Public hearing notice: The medical cannabis program manager or designee shall, upon direction from the advisory board chairperson, prepare a notice of public hearing setting forth the date, time and location of the hearing, a brief description of the petitions received, and information on the requirements for public comment or statement of intent to present technical evidence, and no later than 30 days prior to the hearing date, send copies, with requests for publication, to at least one newspaper of general circulation. The program manager or designee may further issue notice of the hearing by any other means the department determines to be acceptable to provide notice to the public.

D. Public hearing agenda: The department shall make available an agenda containing a list of specific items to be discussed or information on how the public may obtain a copy of such agenda.

E. Postponement of hearing: Request for postponement of a public hearing will be granted, by the advisory board for good cause shown.

F. Statement of intent to present technical evidence: Any individual or association of individuals who wish to present technical evidence at the hearing shall, no later than 15 days prior to the date of the hearing, file a statement of intent. The statement of intent to present technical evidence shall include:

(1) the name of the person filing the statement;

(2) indication of whether the person filing the statement supports or opposes the petition at issue;

(3) the name of each witness;

(4) an estimate of the length of the direct testimony of each witness;

(5) a list of exhibits, if any, to be offered into evidence at the hearing; and

(6) a summary or outline of the anticipated direct testimony of each witness.

G. Ex parte discussions: At no time after the initiation and before the conclusion of the petition process under this part, shall the department, or any other party, interested participant or their representatives discuss ex parte the merits of the petitions with any advisory board member.

H. Public hearing process: The advisory board chairperson shall conduct the public hearing so as to provide a reasonable opportunity for all interested persons to be heard without making the hearing unreasonably lengthy or cumbersome or burdening the record with unnecessary repetition.

(1) A quorum of the advisory board shall consist of three voting members.

(2) The advisory board chairperson or alternate shall convene each public hearing by:

(a) introduction of the advisory board members;

(b) statutory authority of the board;

(c) statement of the public hearing agenda; and

(d) recognition of the petitioner.

(3) Petitioner comment period. The petitioner or by representative may present evidence to the advisory board. The advisory board shall only consider findings of fact or scientific conclusions of medical evidence presented by the petitioner or by representative to the advisory board prior to or contemporaneously with the public hearing.

(4) Public comment period: The advisory board may provide for a public comment period. Public comment may be by written comment, verbal or both.

(a) Written comment: Any individual or association of individuals may submit written comment to the advisory board either in opposition or support of the inclusion of a medical conditions, medical treatments or diseases to the existing list of debilitating medical conditions contained under the act. All written comment shall adhere to the requirements of Subsection F of this section.

(b) Public comment: Any member of the general public may testify at the public hearing. No prior notification is required to present general non-technical statements in support of or in opposition to the petition. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is non-technical in nature and not unduly repetitious of the testimony.

I. Recording the hearing: Unless the advisory board orders otherwise, the hearing will be audio recorded. Any person, other than the advisory board, desiring a copy of the audio tapes must arrange copying with the medical cannabis program or designee at their own expense.

[7.34.2.10 NMAC - Rp, 7.34.2.10 NMAC, 2/27/2015]

7.34.2.11 ADVISORY BOARD RECOMMENDATION TO THE DEPARTMENT:

A. Advisory board recommendation: Upon final determination the advisory board shall provide to the secretary a written report of finding, which recommends either the approval or denial of the petitioner's request. The written report of findings shall include a medical justification for the recommendation based upon the individual or collective expertise of the advisory board membership. The medical justification shall delineate between the findings of fact made by the advisory board and scientific conclusions of credible medical evidence.

B. Department final determination: The department shall notify the petitioner within 10 days of the secretary's determination. A denial by the secretary regarding the inclusion of a medical conditions, medical treatments or diseases to the existing list of debilitating medical conditions contained under the act shall not represent a permanent denial by the department. Any individual or association of individuals may upon good cause re-petition the advisory board. All requests shall present new supporting findings of fact, or scientific conclusions of credible medical evidence not previously examined by the advisory board.

[7.34.2.11 NMAC - Rp, 7.34.2.11 NMAC, 2/27/2015]

7.34.2.12 SEVERABILITY: If any part or application of these rules is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Failure to promulgate rules or implement any provision of these rules shall not interfere with the remaining protections provided by these rules and the act.

[7.34.2.12 NMAC - Rp, 7.34.2.12 NMAC, 2/27/2015]

HISTORY OF 7.34.2 NMAC:

Pre NMAC History: none.

History of Repealed Material:

7.34.2 NMAC, Advisory Board Responsibilities and Duties (filed 03/19/2008) repealed 12/30/2010.

7.34.2 NMAC, Advisory Board Responsibilities and Duties (filed 12/16/2010) repealed 2/27/2015.

NMAC History:

7.34.2 NMAC, Advisory Board Responsibilities and Duties (filed 03/19/2008) was replaced by 7.34.2 NMAC, Advisory Board Responsibilities and Duties, effective 12/30/2010.

7.34.2 NMAC, Advisory Board Responsibilities and Duties (filed 12/16/2010) was replaced by 7.34.2 NMAC, Advisory Board Responsibilities and Duties, effective 2/27/2015.